

SENATE BILL NO. 22

INTRODUCED BY A. BISHOP

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A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING AND CONSUMER CHOICE ACT AND THE ELECTRICITY BUYING COOPERATIVE ACT; ADJUSTING RELATED STATUTES THAT REFER TO THE REPEALED ACTS; AMENDING SECTIONS 15-72-103, 15-72-104, 69-3-1402, AND 69-3-1403, MCA; REPEALING SECTIONS 15-72-102, 35-19-101, 35-19-102, 35-19-103, 35-19-104, 35-19-105, 35-19-106, 35-19-107, 35-19-108, 35-19-201, 35-19-202, 35-19-203, 35-19-204, 35-19-205, 35-19-301, 35-19-302, 35-19-303, 35-19-304, 35-19-305, 35-19-306, 35-19-307, 35-19-308, 35-19-309, 35-19-310, 35-19-311, 35-19-312, 35-19-313, 35-19-314, 35-19-315, 69-8-101, 69-8-102, 69-8-103, 69-8-104, 69-8-201, 69-8-202, 69-8-203, 69-8-204, 69-8-208, 69-8-209, 69-8-210, 69-8-211, 69-8-301, 69-8-302, 69-8-303, 69-8-304, 69-8-308, 69-8-309, 69-8-310, 69-8-311, 69-8-401, 69-8-402, 69-8-403, 69-8-404, 69-8-408, 69-8-409, 69-8-410, 69-8-411, 69-8-412, 69-8-413, 69-8-414, 69-8-416, 69-8-417, 69-8-501, 69-8-502, 69-8-503, 69-8-601, 69-8-602, 69-8-603, AND 69-8-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 15-72-103, MCA, is amended to read:

**"15-72-103. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Customer" or "purchaser" means a person who acquires for consideration electricity for use or consumption and not for resale.

(2) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of electricity to the public. A distribution services provider includes a purchaser who takes electricity directly from a transmission line and a purchaser who generates electricity for the purchaser's own use but does not include electricity generated by the purchaser for noncommercial use or for agricultural use.

(3) "Person" means an individual, estate, trust, receiver, cooperative association, corporation,



1 limited liability company, firm, partnership, joint venture, syndicate, or other entity, including any gas or  
 2 electric utility owned or operated by a county, municipality, or other political subdivision of the state.

3 (4) "Transmission services provider" means a person controlling or operating ~~transmission facilities~~  
 4 ~~as that term is defined in 69-8-103~~ those facilities that are used to provide transmission services as  
 5 determined by the federal energy regulatory commission and the public service commission."

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7 **Section 2.** Section 15-72-104, MCA, is amended to read:

8 **"15-72-104. Wholesale energy transaction tax -- rate of tax -- exemptions -- cost recovery.** (1) (a)

9 Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity  
 10 transmitted within the state as provided in this section. The tax is imposed at a rate of 0.015 cent per  
 11 kilowatt hour of electricity transmitted by a transmission services provider in the state.

12 (b) For electricity produced in the state for delivery outside of the state, the taxpayer is the person  
 13 owning or operating the electrical generation facility producing the electricity. The transmission services  
 14 provider shall collect the tax from the person based upon the kilowatt hours introduced onto transmission  
 15 lines from the electrical generation facility. The amount of kilowatt hours subject to tax must be reduced  
 16 by 5% to compensate for transmission line losses.

17 (c) For electricity produced in the state for delivery within the state, the taxpayer is the distribution  
 18 services provider. The transmission services provider shall collect the tax based upon the amount of  
 19 kilowatt hours of electricity delivered to the distribution services provider. The taxpayer may apply for a  
 20 refund for overpayment of taxes pursuant to 15-72-116.

21 (d) For electricity produced outside the state for delivery inside the state, the taxpayer is the  
 22 distribution services provider. The transmission services provider shall collect the tax based upon the  
 23 amount of kilowatt hours of electricity delivered to the distribution services provider.

24 ~~(e) For electricity delivered to a distribution services provider that is a rural electric cooperative~~  
 25 ~~for delivery to purchasers that have opted for customer choice under the provisions of Title 69, chapter~~  
 26 ~~8, part 3, the taxpayer is the distribution services provider. The transmission services provider shall collect~~  
 27 ~~the tax based on the amount of kilowatt hours of electricity delivered to the distribution services provider~~  
 28 ~~that is attributable to customers that have opted for customer choice.~~

29 ~~(f)~~(e) For electricity delivered to a distribution services provider that prior to May 2, 1999, was  
 30 owned by a public utility as defined in 69-3-101, the tax is imposed on the successor distribution services

1 provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours  
2 of electricity delivered to the distribution services provider.

3 (2) (a) If more than one transmission services provider transmits electricity, the last transmission  
4 services provider transmitting or delivering the electricity shall collect the tax.

5 (b) If the transmission services provider is an agency of the United States government, the  
6 distribution services provider receiving the electricity shall self-assess the tax subject to the provisions of  
7 this part.

8 (c) If an electrical generation facility located within the state produces electricity for sale inside  
9 and outside the state, sales within the state are considered to have come from electricity produced within  
10 the state for purposes of the tax imposed by this section.

11 (3) (a) Electricity transmitted through the state that is not produced or delivered in the state is  
12 exempt from the tax imposed by this section.

13 (b) Electricity produced in the state by an agency of the of the United States government for  
14 delivery outside of the state is exempt from the tax imposed by this section.

15 (c) Electricity delivered to a distribution services provider that ~~is a municipal utility described in~~  
16 ~~69-8-103(5)(b)~~ was an existing municipal electric utility as of May 2, 1997, or a rural electric cooperative  
17 organized under the provisions of Title 35, chapter 18, is exempt from the tax imposed by this section.

18 (d) Electricity delivered to a purchaser that receives its power directly from a transmission or  
19 distribution facility owned by an entity of the United States government on or before May 2, 1997, or  
20 electricity that is transmitted exclusively on transmission or distribution facilities owned by an entity of  
21 the United States government on or before May 2, 1997, is exempt from the tax imposed by this section.

22 [(e) Electricity delivered by a distribution services provider to a customer with loads of 1,000  
23 kilowatts or greater that was first served by a public utility after December 31, 1996, is exempt from the  
24 tax imposed by this section, provided that the customer purchases the electricity pursuant to a contract  
25 or contracts that establish the purchase price or prices of electricity. The exemption allowed by this  
26 subsection (3)(e) does not apply to electricity purchased under a renewal or extension of an existing  
27 contract or existing contracts.]

28 (4) A distribution services provider is allowed to recover the tax imposed by this section and the  
29 administrative costs to comply with this part in its rates. (Bracketed language terminates January 1,  
30 2003--sec. 40, Ch. 556, L. 1999.)"

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2 **Section 3.** Section 69-3-1402, MCA, is amended to read:

3 **"69-3-1402. Definitions.** As used in this part, the following definitions apply:

4 (1) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing  
 5 vehicle, to which a natural gas utility assigns, sells, or transfers, other than as security, all or a portion of  
 6 the natural gas utility's interest in or right to transition property. The term also includes an entity,  
 7 corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells,  
 8 or transfers, other than as security, the assignee's interest in or right to transition property.

9 (2) "Board" means the board of investments created by 2-15-1808.

10 ~~(1)~~(3) "Customer" means a natural gas customer or consumer of natural gas supply or natural gas  
 11 transmission facilities, storage facilities, or distribution facilities.

12 ~~(2)~~(4) "Distribution facilities" means those facilities that are not transmission facilities:

13 (a) by and through which natural gas is received from a transmission services provider and  
 14 transmitted to the customer; and

15 (b) operated by a distribution services provider.

16 ~~(3)~~(5) "Distribution services provider" means a person controlling or operating distribution facilities  
 17 for distribution of natural gas to the public.

18 (6) "Financing order" means an order of the commission adopted in accordance with [section 5]  
 19 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition  
 20 bonds.

21 (7) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not  
 22 limited to:

23 (i) distribution;

24 (ii) connection;

25 (iii) disconnection; and

26 (iv) termination rates and charges that are authorized by the commission in a financing order to  
 27 permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the  
 28 transition costs and of acquiring transition property through a plan approved by the commission in the  
 29 financing order, including the costs of issuing, servicing, and retiring transition bonds.

30 (b) If requested by a natural gas utility in the natural gas utility's application for a financing order,

1 fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes  
2 in which the transition cost recovery period is modified by the transactions approved in the financing order.

3 ~~(4)~~(8) "Natural gas supplier" means a person, including aggregators, market aggregators, brokers,  
4 and marketers, licensed by the commission that is offering to sell natural gas to retail customers in the  
5 state of Montana.

6 ~~(5)~~(9) "Natural gas utility" means a utility regulated by the commission on May 2, 1997, that  
7 provides natural gas services to the public.

8 ~~(6)~~(10) "Open access" means that a natural gas utility has made its transmission facilities, storage  
9 facilities, or distribution facilities available to all natural gas suppliers, transmission services providers,  
10 distribution services providers, and customers on a nondiscriminatory and comparable basis.

11 ~~(7)~~(11) "Performance-based ratemaking" means those forms of regulation that include but are not  
12 limited to the use of revenue indexing, price indexing, ranges of authorized return, gas cost indexing, and  
13 innovative use of utility-related assets and activities, such as system sales of excess natural gas supplies,  
14 release of upstream pipeline capacity, and performance of billing services for other natural gas suppliers.  
15 A performance-based regulation may also include a mechanism for automatic annual adjustments of  
16 revenue to prices to reflect changes in any index adopted for the implementation of the performance-based  
17 form of regulation.

18 ~~(8)~~(12) "Storage facilities" means those facilities that are owned, controlled, or operated by a  
19 person offering storage service for natural gas and generally means any underground reservoir suitable for  
20 the storage of natural gas and the facilities used to inject and withdraw natural gas into and out of that  
21 underground reservoir.

22 (13) "Transition bondholder" means a holder of transition bonds, including trustees, collateral  
23 agents, and other entities acting for the benefit of that holder.

24 (14) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust  
25 certificate, or other evidence of indebtedness or ownership issued by the board or another transition bonds  
26 issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from  
27 transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire  
28 transition property.

29 (15) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to  
30 pay the customer's share of transition costs.

1           (16) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending  
2 when a natural gas utility customer does not have any liability for payment of transition costs.

3           ~~(9)~~(17) "Transition costs" means:

4           (a) a natural gas utility's net, verifiable production- and gathering-related costs, including costs  
5 of capital, that become unrecoverable as a result of customer choice and open access. These costs include  
6 but are not limited to:

7           (i) regulatory assets and deferred charges that exist as a result of current regulatory practices and  
8 that may be accounted for up to the point in time that the commission issues a final order in a docket  
9 addressing transition costs, including all costs, expenses, and fees related to the issuance of transition  
10 bonds;

11           (ii) the above-market costs associated with existing gas supply commitments;

12           (iii) other natural gas utility investments rendered uneconomic as a result of implementation of  
13 customer choice and open access;

14           (iv) the costs associated with renegotiation or buyout of existing natural gas purchase contracts;  
15 and

16           (v) the costs associated with the issuance of any related transition bonds authorized by the  
17 commission pursuant to 69-3-1403.

18           (b) the costs of refinancing or retiring debt or equity capital of the natural gas utility and  
19 associated federal and state tax liabilities or other utility costs for which the use of transition bonds would  
20 benefit customers.

21           (18) "Transition property" means the property right created by a financing order, including without  
22 limitation the right, title, and interest of a natural gas utility, assignee, or other issuer of transition bonds  
23 to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed  
24 transition amounts that are the subject of a financing order, including those nonbypassable rates and other  
25 charges and fixed transition amounts that are authorized by the commission in the financing order to  
26 recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition  
27 costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition  
28 bonds. Any right that a natural gas utility has in the transition property before the natural gas utility's sale  
29 or transfer or any other right created under this section or created in the financing order and assignable  
30 under this chapter or assignable pursuant to a financing order is only a contract right.

1           ~~(10)~~(19) "Transmission facilities" means those facilities owned, controlled, and operated by a  
 2 transmission services provider that are used to transport natural gas from a gathering line or storage  
 3 facility to a distribution facility, storage facility, or end-use customer.

4           ~~(11)~~(20) "Transmission services provider" means a person controlling or operating transmission  
 5 facilities.

6           ~~(12)~~(21) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed  
 7 on a customer to pay the customers share of universal system benefits program costs.

8           ~~(13)~~(22) "Universal system benefits programs" means public purpose programs for cost-effective  
 9 local energy conservation, low-income weatherization, and low-income energy bill assistance."  
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11           **Section 4.** Section 69-3-1403, MCA, is amended to read:

12           **"69-3-1403. Customer choice.** (1) A natural gas utility may voluntarily offer its customers choice  
 13 of natural gas supplier and provide open access to its transmission facilities, storage facilities, or  
 14 distribution facilities.

15           (2) If a customer choice offering results in transition costs, the commission may allow those  
 16 transition costs to be recovered in separate identifiable charges to customers. Upon commission approval,  
 17 the natural gas utility must have the opportunity but not the obligation to finance the fixed transition costs  
 18 and related financing costs using transition cost financing as provided for in ~~69-8-103 and 69-8-503~~  
 19 [section 5]."

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21           NEW SECTION. **Section 5. Transition costs financing.** (1) A natural gas utility may apply to the  
 22 commission for a determination that certain transition costs may be recovered through the issuance of  
 23 transition bonds. If transition bonds are issued, cost savings associated with and resulting from the bonds  
 24 must benefit customers. After the issuance of a financing order, the natural gas utility retains sole  
 25 discretion regarding whether to sell, assign, or otherwise transfer or pledge transition property or to cause  
 26 the transition bonds to be issued, including the right to defer or postpone the sale, assignment, transfer,  
 27 pledge, or issuance. If transition bonds are not issued within 4 years of the issuance of the financing order,  
 28 the financing order must terminate. The natural gas utility may apply for an extension or renewal of a  
 29 financing order.

30           (2) (a) The commission may issue financing orders in accordance with this section to facilitate the

1 recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition  
2 property. A financing order may be adopted only upon the application of a natural gas utility and may only  
3 become effective in accordance with its terms after the natural gas utility files with the commission the  
4 natural gas utility's written consent to all terms and conditions of the financing order. A financing order  
5 may specify how amounts collected from a customer are allocated between fixed transition amounts and  
6 other charges.

7 (b) A financing order must include, without limitation, a procedure for the expeditious approval  
8 by the commission of periodic adjustments to nonbypassable rates and charges associated with fixed  
9 transition amounts included in the order to ensure recovery of all transition costs and the costs of capital  
10 associated with the proposed recovery, reimbursement, financing, or refinancing of transition costs and  
11 the acquisition of transition property including the costs of issuing, servicing, and retiring the transition  
12 bonds contemplated by the financing order. The order must set forth the term over which the transition  
13 bonds are to be paid, but those terms may not exceed 20 years. These adjustments may not impose fixed  
14 transition amounts upon customer classes that were not subject to the fixed transition amounts in the  
15 pertinent financing order.

16 (3) (a) Notwithstanding any other provision of law and except as otherwise provided in this section  
17 with respect to transition property that has been made the basis for the issuance of transition bonds and  
18 upon the issuance of transition bonds, the financing orders and the fixed transition amounts must be  
19 irrevocable.

20 (b) If transition bonds have been issued, the commission may not by rescinding, altering, or  
21 amending the financing order or otherwise:

22 (i) revalue or revise for ratemaking purposes the transition costs or the costs of recovering,  
23 reimbursing, financing, or refinancing the transition costs and acquiring transition property;

24 (ii) determine that the fixed transition amounts or rates are unjust or unreasonable; or

25 (iii) in any way reduce or impair the value of transition property either directly or indirectly by taking  
26 fixed transition amounts into account when setting other rates for the natural gas utility.

27 (c) The total amount of the transition property may not be subject to reduction, impairment,  
28 postponement, or termination.

29 (d) Except as otherwise provided in this section, the state pledges and agrees with the assignees  
30 and pledgees of transition property and transition bondholders that the state may not limit or alter the fixed

1 transition amounts, transition property, financing orders, or any right under the bonds until the bonds,  
2 together with the interest on the bonds, are fully met and discharged. The board, as agent for the state,  
3 is authorized to include this pledge and undertaking for the state in these bonds.

4 (e) Notwithstanding any other provision of this section, the commission shall approve adjustments  
5 to the fixed transition amounts that may be necessary to ensure timely recovery of all transition costs that  
6 are the subject of the pertinent financing order and the costs of capital associated with the recovery,  
7 reimbursement, financing, or refinancing of transition costs and acquiring transition property including the  
8 costs of issuing, servicing, and retiring the transition bonds contemplated by the financing order. The  
9 adjustments may not impose fixed transition amounts upon customer classes that were not subject to the  
10 fixed transition amounts in the pertinent financing order.

11 (4) (a) Financing orders do not constitute a debt or liability of the state or of any political  
12 subdivision of the state if issued through the board and do not constitute a pledge of the full faith and  
13 credit of the state or any of the state's political subdivisions if issued through the board. The financing  
14 orders are payable solely from the funds provided under this section. The bonds and offering documents  
15 must contain on their face a statement to the following effect:

16 This bond may not constitute an indebtedness or a loan of credit of the state of Montana or any  
17 political subdivision of the state of Montana within any constitutional or statutory provision. Neither the  
18 full faith and credit nor the taxing power of the state of Montana is pledged to the payment of the principal  
19 or interest on this bond, and neither the state of Montana nor any political subdivision of the state of  
20 Montana is obligated, directly, indirectly, or contingently, to levy or to pledge any form of taxation or to  
21 make any appropriation for the payment of this bond. This bond is a limited obligation of the issuer,  
22 payable solely out of the transition property or the proceeds of that property specifically pledged for its  
23 payment and not otherwise.

24 (b) The issuance of bonds under this section may not directly, indirectly, or contingently obligate  
25 the state or any political subdivision of the state to levy or to pledge any form of taxation or to make any  
26 appropriation for bond payment.

27 (5) The commission shall establish procedures for the expeditious processing of applications for  
28 financing orders, including the approval or disapproval of applications within 120 days after a natural gas  
29 utility submits a complete application. The commission shall provide in any financing order for a procedure  
30 for the expeditious approval by the commission of periodic adjustments to the fixed transition amounts

1 that are the subject of the pertinent financing order pursuant to subsection (2). The commission shall  
2 determine on each anniversary of the issuance of the financing order and at additional intervals as may  
3 be provided for in the financing order whether the adjustments are required and shall provide for the  
4 adjustments, if required, to be approved within 60 days of each anniversary of the issuance of the  
5 financing order or of each additional interval provided for in the financing order.

6 (6) Fixed transition amounts become transition property when and to the extent that a financing  
7 order authorizing the fixed transition amounts has become effective in accordance with subsection (2), and  
8 the transition property must thereafter continuously exist as property for all purposes with all of the rights  
9 and privileges of this chapter for the period and to the extent provided in the financing order or until the  
10 transition bonds are paid in full including all principal, interest, premium, costs, and arrearages on the  
11 transition bonds.

12 (7) Transition bonds may be issued upon commission approval in the pertinent financing order.  
13 Transition bonds must specify that they do not provide recourse to the credit or any assets of the natural  
14 gas utility, other than the transition property as specified in the pertinent financing order.

15 (8) (a) A natural gas utility may sell, assign, or transfer all or portions of the natural gas utility's  
16 interest in transition property to an assignee. A natural gas utility or an assignee may further sell, assign,  
17 or transfer the natural gas utility's interest in that transition property to one or more assignees in  
18 connection with the issuance of transition bonds to the extent approved in the pertinent financing order.

19 (b) A natural gas utility or an assignee may pledge transition property as collateral for transition  
20 bonds to the extent approved in the pertinent financing order and may provide for a security interest in  
21 the transition property as provided in this section.

22 (c) Transition property may be sold, assigned, or transferred for the benefit of:

23 (i) transition bondholders in connection with the exercise of remedies upon a default; or

24 (ii) any person acquiring the transition property after a sale, assignment, or transfer pursuant to  
25 this section.

26 (9) (a) To the extent that any interest in transition property is sold, assigned, transferred, or  
27 pledged as collateral, the commission shall authorize the natural gas utility to contract with any assignee  
28 so that the natural gas utility will, subject to the natural gas utility's rights under subsection (18):

29 (i) continue to operate the natural gas utility's system and to provide service to the natural gas  
30 utility's customers;

1 (ii) collect amounts in respect of the fixed transition amounts for the benefit and account of the  
2 assignee; and

3 (iii) account for and remit these amounts to or for the account of the assignee.

4 (b) Contracting with the assignee in accordance with the commission's authorization may not  
5 impair or negate the characterization of the sale, assignment, transfer, or pledge as a true sale, an absolute  
6 assignment or transfer, or a grant of a security interest, as applicable.

7 (10) Notwithstanding any other provision of law, any provision under this section or under a  
8 financing order requiring that the commission take or refrain from taking action with respect to the subject  
9 matter of a financing order binds the commission and any successor commission or agency exercising  
10 functions similar to the commission, and the commission or any successor commission or agency may not  
11 rescind, alter, or amend that requirement in a financing order.

12 (11) A pledge or any other security interest in transition property is valid, is enforceable against  
13 the pledgor and third parties, including judgment lien creditors, subject only to the rights of any third  
14 parties holding security interests in the transition property perfected in the manner described in this  
15 section, and attaches only when all of the following have taken place:

16 (a) the commission has issued the financing order authorizing the fixed transition amounts included  
17 in the transition property;

18 (b) value has been given by the pledgees of the transition property; and

19 (c) the pledgor has signed a security agreement or other financing-related agreement covering the  
20 transition property.

21 (12) (a) A valid and enforceable security interest in transition property is perfected only when it  
22 has attached and when a financing statement has been filed with the secretary of state in accordance with  
23 procedures that the secretary of state may establish. The financing statement must name the pledgor of  
24 the transition property as debtor and identify the transition property.

25 (b) Any description of the transition property is sufficient if the description refers to the financing  
26 order creating the transition property.

27 (c) The commission may require other filings with respect to the security interest in accordance  
28 with procedures the commission may establish, except that these filings may not affect the perfection of  
29 the security interest.

30 (13) A perfected security interest in transition property is a continuously perfected security interest

1 in all revenue and proceeds arising with respect to the transition property, whether or not the revenue or  
2 proceeds have accrued. Conflicting security interests must rank according to priority in time of perfection.  
3 Transition property constitutes property for all purposes, including for contracts securing transition bonds,  
4 whether or not the revenue and proceeds arising with respect to the transition property have accrued.

5 (14) (a) Subject to the terms of the security agreement covering the transition property and the  
6 rights of any third parties holding security interests in the transition property perfected in the manner  
7 described in this section, the validity and relative priority of a security interest created under this section  
8 is not defeated or adversely affected by:

9 (i) the commingling of revenue arising with respect to the transition property with other funds of  
10 the natural gas utility that is the pledgor or transferor of the transition property; or

11 (ii) any security interest of any third party in a deposit account of that natural gas utility perfected  
12 under Title 30, chapter 9, part 3, into which the revenue is deposited.

13 (b) Subject to the terms of the security agreement, upon compliance with the requirements of this  
14 section, a pledgee of the transition property has a perfected security interest in all cash and deposit  
15 accounts of the natural gas utility in which revenue arising with respect to the transition property has been  
16 commingled with other funds, but the perfected security interest must be limited to an amount no greater  
17 than the amount of the revenue with respect to the transition property received by the natural gas utility  
18 within 12 months before any default under the security agreement or the institution of insolvency  
19 proceedings by or against the natural gas utility, less payments from the revenue to the pledgees during  
20 that 12-month period.

21 (15) (a) If a default occurs under the security agreement covering the transition property, a  
22 pledgee of the transition property, subject to the terms of the security agreement, has all rights and  
23 remedies of a secured party upon default under Title 30, chapter 9, part 6, and is entitled to foreclose or  
24 otherwise enforce the pledgee's security interest in the transition property, subject to the rights of any  
25 third parties holding prior security interests in the transition property perfected in the manner provided in  
26 this section.

27 (b) The commission may require in the financing order creating the transition property that in the  
28 event of default by the natural gas utility in payment of revenue arising with respect to the transition  
29 property, the commission and any successor to the commission, upon the application by a pledgee or  
30 assignee of the transition property and without limiting any other remedies available to the pledgees or

1 transferees by reason of the default, shall order the sequestration and payment to the pledgee or assignee  
2 of the proceeds of the transition property. An order must remain in full force and effect notwithstanding  
3 any bankruptcy, reorganization, or other insolvency proceedings with respect to the natural gas utility or  
4 a debtor, pledgor, or transferor of the transition property.

5 (c) Any sum in excess of amounts necessary to pay principal, premium, if any, interest, costs, and  
6 arrearages on the transition bonds and other costs arising under the security agreement must be remitted  
7 to the debtor or to the pledgor as provided in the security agreement.

8 (16) (a) A transfer of transition property by a natural gas utility to an assignee or by the assignee  
9 to another assignee that the parties have in the governing documentation expressly stated to be a sale or  
10 other absolute transfer in a transaction approved or authorized in a financing order must be treated as an  
11 absolute transfer of all of the transferors right, title, and interest, as in a true sale, and not as a pledge or  
12 other financing of the transition property, other than for federal and state income and franchise tax  
13 purposes.

14 (b) Granting to transition bondholders a preferred right to revenue of the natural gas utility or the  
15 provision by the natural gas utility or an assignee of other credit enhancement with respect to transition  
16 bonds may not impair or negate the characterization of any transfer as a true sale, other than for federal  
17 and state income and franchise tax purposes.

18 (c) Notwithstanding the provisions of this subsection (16), for state tax purposes, a transfer must  
19 be treated as a pledge or other financing unless the governing documentation of transfer specifically states  
20 that the transfer is intended to be treated otherwise. The characterization of the transfer as a true sale or  
21 other absolute transfer in the governing documentation of a transfer is not intended to prejudice the  
22 characterization of the transfer as a pledge or other financing for federal tax purposes.

23 (17) A sale, assignment, or other transfer of transition property may only be considered perfected  
24 as against any third person, including any judicial lien creditor, when both of the following have taken  
25 place:

26 (a) the financing order authorizing the fixed transition amounts included in the transition property  
27 has become effective in accordance with subsection (2); and

28 (b) a written assignment of the transition property has been executed and delivered to the  
29 transferee.

30 (18) (a) As between bona fide assignees of the same right for value without notice, the assignee

1 first filing a financing statement with the secretary of state in accordance with procedures that the  
2 secretary of state may establish has priority. The financing statement must name the assignor of the  
3 transition property as debtor and must identify the transition property. Any description of the transition  
4 property is sufficient if the description refers to the financing order creating the transition property. The  
5 commission may require the assignor or the assignee to make other filings with respect to the transfer in  
6 accordance with procedures that the commission may establish, but these filings may not affect the  
7 perfection of the transfer.

8 (b) Any successor to the natural gas utility, whether pursuant to any bankruptcy, reorganization,  
9 or other insolvency proceeding or pursuant to any merger, sale, or transfer, by operation of law or  
10 otherwise, shall perform and satisfy all obligations of the natural gas utility pursuant to this section in the  
11 same manner and to the same extent as the natural gas utility, including but not limited to collecting and  
12 paying to the assignee or pledgee, as the case may be, revenue arising with respect to the transition  
13 property sold, assigned, transferred, or pledged to secure transition bonds.

14 (19) Transition property or any right, title, or interest of a natural gas utility, assignee, or pledgee  
15 described in the definition of transition property, whether before or after the issuance of a financing order,  
16 does not constitute an account or general intangible as those terms are defined in 30-9-122. Any right,  
17 title, or interest pertaining to a financing order, including the interest pertaining to a financing order, along  
18 with the associated transition property and any revenue, collections, claims, payments, money, or  
19 proceeds of or arising from fixed transition amounts pursuant to the financing order, may not be  
20 considered proceeds of any right, title, or interest other than in the order and the transition property arising  
21 from the order.

22 (20) The lien under this section is enforceable against the pledgor and all third parties, including  
23 judicial lien creditors, subject only to the rights of any third parties holding security interests in the  
24 transition property previously perfected in the manner described in this section if value has been given by  
25 the purchasers of transition bonds. A perfected lien in transition property is a continuously perfected  
26 security interest in all revenue and proceeds arising with respect to the associated transition property,  
27 whether or not revenue has been accrued. Transition property constitutes property for the purposes of  
28 contracts securing transition bonds, whether or not the related revenue has accrued. The lien created  
29 under this section is perfected and ranks before any lien, including any judicial lien, that subsequently  
30 attaches to the transition property, to the fixed transition costs, and to the financing order and any rights

1 created by the order or any proceeds of the order. The relative priority of a lien created under this section  
 2 is not defeated or adversely affected by changes to the financing order or to the fixed transition amounts  
 3 payable by any customer.

4 (21) The commission shall establish and maintain a separate system of records to reflect the date  
 5 and time of receipt of all filings made under this section and may provide that transfers of transition  
 6 property to an assignee be filed in accordance with the same system.

7 (22) Any sale, assignment, or other transfer of transition property or any pledge of transition  
 8 property is exempt from any state or local sales, income, transfers, gains, receipts, or similar taxes.

9 (23) The transition bonds issued under this chapter are exempt from the provisions of Title 30,  
 10 chapter 10, but copies of all prospectus and disclosure documents must be deposited for public inspection  
 11 with the state securities commissioner.

12 (24) The granting, perfection, and priority of security interests with respect to transition property  
 13 and the proceeds thereof are governed by this section rather than by Title 30, chapter 9.

14 (25) Upon the payment in full of transition bond principal and interest, the natural gas utility shall  
 15 discontinue charging and collecting the competitive transition charge associated with that portion of the  
 16 natural gas utility's approved transition costs.

17 (26) The commission may, by order or rule and subject to terms and conditions that it may  
 18 prescribe, exempt any security or class of securities for which an application is required under this title or  
 19 any natural gas utility or class of natural gas utility from the provisions of this title if it finds that the  
 20 application of this title to the security, class of security, natural gas utility, or class of natural gas utility  
 21 is not required by the public interest.

22

23 NEW SECTION. **Section 6. Repealer.** Sections 15-72-102, 35-19-101, 35-19-102, 35-19-103,  
 24 35-19-104, 35-19-105, 35-19-106, 35-19-107, 35-19-108, 35-19-201, 35-19-202, 35-19-203,  
 25 35-19-204, 35-19-205, 35-19-301, 35-19-302, 35-19-303, 35-19-304, 35-19-305, 35-19-306,  
 26 35-19-307, 35-19-308, 35-19-309, 35-19-310, 35-19-311, 35-19-312, 35-19-313, 35-19-314,  
 27 35-19-315, 69-8-101, 69-8-102, 69-8-103, 69-8-104, 69-8-201, 69-8-202, 69-8-203, 69-8-204,  
 28 69-8-208, 69-8-209, 69-8-210, 69-8-211, 69-8-301, 69-8-302, 69-8-303, 69-8-304, 69-8-308,  
 29 69-8-309, 69-8-310, 69-8-311, 69-8-401, 69-8-402, 69-8-403, 69-8-404, 69-8-408, 69-8-409,  
 30 69-8-410, 69-8-411, 69-8-412, 69-8-413, 69-8-414, 69-8-416, 69-8-417, 69-8-501, 69-8-502,

1 69-8-503, 69-8-601, 69-8-602, 69-8-603, and 69-8-604, MCA, are repealed.

2

3 NEW SECTION. **Section 7. Codification instruction.** [Section 5] is intended to be codified as an  
4 integral part of Title 69, chapter 3, part 14, and the provisions of Title 69, chapter 3, part 14, apply to  
5 [section 5].

6

7 NEW SECTION. **Section 8. Saving clause.** [This act] does not affect rights and duties that  
8 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
9 act].

10

11 NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

12

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